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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,126	10/31/2003	Arup Acharya	YOR920030411US1	8951

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FERENCE & ASSOCIATES LLC
409 BROAD STREET
PITTSBURGH, PA 15143

EXAMINER	
SIKRI, ANISH	
ART UNIT	**PAPER NUMBER**
2109	
MAIL DATE	**DELIVERY MODE**
05/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/698,126	ACHARYA ET AL.	
	Examiner	Art Unit	
	Anish Sikri	2109	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 October 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *23 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim **1 to 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Anerousis et al (US Pub 2004/0210670) in view of Klinker et al (US Pat 7,133,365).

Consider **Claim 1**, Anerousis et al discloses a method for network route control (Anerousis et al, Fig 2, Fig 3, Page 3, [0030]-[0031]), measuring relevant performance and availability metrics of said links (Anerousis et al, Page 2, [0020]); and said computer directs network traffic to the best link based upon said relevant performance and availability metrics (Anerousis et al, Page 2, [0018]-[0019], Page 7 [0085]).

But Anerousis et al fails to disclose the method comprising the steps of: establishing a connection between a general purpose computer and an arrangement for linking said computer to multiple internet service providers (ISPs).

Nonetheless, Klinker et al discloses the method comprising the steps of: establishing a connection between a general-purpose computer and an arrangement for

linking said computer to multiple Internet service providers (Klinker et al, Col 1, Lines 30-39, Col 7 Lines 21-25). Klinker et al's invention clearly discloses the use of multiple service providers on the network. Therefore, it would be obvious to a person of ordinary skill in the art at the time of the invention was made to use of multiple service providers to the network, taught by Klinker et al in the method of Anerousis et al, for the purpose of having fail over network connections/redundancies for establishing reliable network transmission.

Consider **Claim 2**, and as applied to claim 1 above, Anerousis et al as modified by Klinker et al discloses the method wherein the said connection is accomplished through Multi-protocol Label Switching (MPLS) switched paths (Anerousis et al, Page 6, [0075]). Anerousis et al clearly shows on the use of the method of incorporating the use of MPLS paths for implementing in IP tunnels.

Consider **Claim 3**, and as applied to claim 1 above, Anerousis et al as modified by Klinker et al discloses the method wherein the said connection is accomplished through Virtual Local Area Network (VLAN) tunnels (Anerousis et al, Page 8, [0096]). Anerousis et al clearly shows on the use of the method incorporating the use of VLAN for implementing in IP tunnels.

Consider **Claim 4**, and as applied to claim 1 above, Anerousis et al as modified by Klinker et al discloses the method wherein the said connection is accomplished using

Internet protocol (IP)-level tunnels (Anerousis et al, Page 4, [0045]). Anerousis et al clearly shows on the use of the method of incorporating IP tunnels on the network.

Consider **Claim 5**, and as applied to claim 1 above, Anerousis et al as modified by Klinker et al discloses the method wherein the relevant performance and availability metric is network delay (Anerosis et al, Page 6, [0064], Page 10, [0106], Page 11, [0123]). Anerousis et al clearly shows on the use of the method involving the metric - network delay, as it shows how it affects or improves the communication on the network.

Consider **Claim 6**, and as applied to claim 1 above, Anerousis et al as modified by Klinker et al discloses the method wherein the relevant performance and availability metric is network loss (Anerosis et al, Page 6, [0064], Page 10, [0106], Page 11, [0123]). Anerousis et al clearly shows on the use of the method involving the metric – network loss, as it shows how it affects or improves the communication on the network.

Consider **Claim 7**, and as applied to claim 1 above, Anerousis et al as modified by Klinker et al discloses the method wherein the relevant performance and availability metric is network throughput (Anerosis et al, Page 6, [0064], Page 10, [0106], Page 11, [0123]). Anerousis et al clearly shows on the use of the method involving the metric – network throughput, as it shows how it affects or improves the communication on the network.

Consider **Claim 8**, and as applied to claim 1 above, Anerousis et al as modified by Klinker et al discloses the method wherein the relevant performance and availability metric is application-layer response time (Anerosis et al, Page 6, [0064], Page 10, [0106], Page 11, [0123]). Anerousis et al clearly shows on the use of the method involving the metric – response time, as it shows how it affects or improves the communication on the network.

Consider **Claim 9**, and as applied to claim 1 above, Anerousis et al as modified by Klinker et al discloses the method wherein the relevant performance and availability metric is cost (Anerosis et al, Page 6, [0064], Page 10, [0106], Page 11, [0123]). Anerousis et al clearly shows on the use of the method involving the metric – cost, as it shows how it affects or improves the communication on the network.

Consider **Claim 10**, Anerousis et al discloses the apparatus for network route control (Anerousis et al, Fig 2, Fig 3, Page 3, [0030]-[0031]), measuring relevant performance and availability metrics of said links (Anerousis et al, Page 2, [0020]); and said computer directs network traffic to the best link based upon said relevant performance and availability metrics (Anerousis et al, Page 2, [0018]-[0019], Page 7 [0085]).

But Anerousis et al fails to disclose the arrangement of the apparatus establishing a connection between a general purpose computer and an arrangement for linking said computer to multiple internet service providers (ISPs).

Nonetheless, Klinker et al discloses the arrangement of the apparatus establishing a connection between a general-purpose computer and an arrangement for linking said computer to multiple Internet service providers (Klinker et al, Col 1, Lines 30-39, Col 7 Lines 21-25). Klinker et al's invention clearly discloses the use of multiple service providers on the network. Therefore, it would be obvious to a person of ordinary skill in the art at the time of the invention was made to use of multiple service providers to the network, taught by Klinker et al in the method of Anerousis et al, for the purpose of having fail over network connections/redundancies for establishing reliable network transmission.

Consider **Claim 11**, and as applied to claim 10 above, Anerousis et al as modified by Klinker et al discloses the apparatus wherein the said connection is accomplished through Multi-protocol Label Switching (MPLS) switched paths (Anerousis

et al, Page 6, [0075]). Anerousis et al clearly shows on the use of the apparatus for incorporating the use of MPLS paths for implementing in IP tunnels.

Consider **Claim 12**, and as applied to claim 10 above, Anerousis et al as modified by Klinker et al discloses the method wherein the said connection is accomplished through Virtual Local Area Network (VLAN) tunnels (Anerousis et al, Page 8, [0096]). Anerousis et al clearly shows on the use of the apparatus for incorporating the use of VLAN for implementing in IP tunnels.

Consider **Claim 13**, and as applied to claim 10 above, Anerousis et al as modified by Klinker et al discloses the apparatus wherein the said connection is accomplished using Internet protocol (IP)-level tunnels (Anerousis et al, Page 4, [0045]). Anerousis et al clearly shows on the use of the apparatus for of incorporating IP tunnels on the network.

Consider **Claim 14**, and as applied to claim 10 above, Anerousis et al as modified by Klinker et al discloses the apparatus wherein the relevant performance and availability metric is network delay (Anerosis et al, Page 6, [0064], Page 10, [0106], Page 11, [0123]). Anerousis et al clearly shows on the use of the apparatus for involving the metric - network delay, as it shows how it affects or improves the communication on the network.

Consider **Claim 15**, and as applied to claim 10 above, Anerousis et al as modified by Klinker et al discloses the apparatus wherein the relevant performance and availability metric is network loss (Anerosis et al, Page 6, [0064], Page 10, [0106], Page 11, [0123]). Anerousis et al clearly shows on the use of the apparatus for involving the metric – network loss, as it shows how it affects or improves the communication on the network.

Consider **Claim 16**, and as applied to claim 10 above, Anerousis et al as modified by Klinker et al discloses the apparatus wherein the relevant performance and availability metric is network throughput (Anerosis et al, Page 6, [0064], Page 10, [0106], Page 11, [0123]). Anerousis et al clearly shows on the use of the apparatus for involving the metric – network throughput, as it shows how it affects or improves the communication on the network.

Consider **Claim 17**, and as applied to claim 10 above, Anerousis et al as modified by Klinker et al discloses the apparatus wherein the relevant performance and availability metric is application-layer response time (Anerosis et al, Page 6, [0064], Page 10, [0106], Page 11, [0123]). Anerousis et al clearly shows on the use of the apparatus for involving the metric – response time, as it shows how it affects or improves the communication on the network.

Consider **Claim 18**, and as applied to claim 10 above, Anerousis et al as modified by Klinker et al discloses the apparatus wherein the relevant performance and availability metric is cost (Anerosis et al, Page 6, [0064], Page 10, [0106], Page 11, [0123]). Anerousis et al clearly shows on the use of the apparatus for involving the metric – cost, as it shows how it affects or improves the communication on the network.

Consider **Claim 19**, Anerousis et al discloses the program storage device readable by machine, tangibly embodying a program of instructions executable by the machine to perform to perform the steps of network route control (Anerousis et al, Fig 2, Fig 3, Page 3, [0030]-[0031]), measuring relevant performance and availability metrics of said links (Anerousis et al, Page 2, [0020]); and said computer directs network traffic to the best link based upon said relevant performance and availability metrics (Anerousis et al, Page 2, [0018]-[0019], Page 7 [0085]).

But Anerousis et al fails to disclose the method of establishing a connection between a general purpose computer and an arrangement for linking said computer to multiple internet service providers (ISPs).

Nonetheless, Klinker et al discloses the method of establishing a connection between a general-purpose computer and an arrangement for linking said computer to multiple Internet service providers (Klinker et al, Col 1, Lines 30-39, Col 7 Lines 21-25). Klinker et al's invention clearly discloses the use of multiple service providers on the network. Therefore, it would be obvious to a person of ordinary skill in the art at the time of the invention was made to use of multiple service providers to the network,

taught by Klinker et al in the method of Anerousis et al, for the purpose of having fail over network connections/redundancies for establishing reliable network transmission.

Conclusion

Any response to this Office Action should be **faxed to** (571) 273-8300 **or mailed to**:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Hand-delivered responses should be brought to

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Anish Sikri whose telephone number is (571) 270-1783. The Examiner can normally be reached on Monday-Thursday from 6:30am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Rafael Pérez-Gutiérrez can be reached on (571) 272-7915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 571-272-4100.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

Anish Sikri
A.S./as

May 21, 2007

RAFAEL PEREZ-GUTIERREZ
SUPERVISORY PATENT EXAMINER
5/21/07